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10 Properties, L.P., a California Limited Partnership,
11 and Geoffrey Palmer

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 PALMER/SIXTH STREET
15 PROPERTIES, L.P., a California
16 limited partnership; and GEOFFREY
17 PALMER, an individual,

18 Plaintiffs

19 vs.

20 CITY OF LOS ANGELES, a
21 California Municipal Corporation

22 Defendant

CASE NO. CV 07-01346CAS(FMOx)

Honorable Christina A. Snyder
Courtroom 5

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
DECLARATORY AND
INJUNCTIVE RELIEF**

1. INVERSE
CONDEMNATION/
TAKING (U.S. CONST. 5TH
AMEND.)
2. VIOLATION OF EQUAL
PROTECTION (U.S.
CONST. 14TH AMEND.)
3. VIOLATION OF DUE
PROCESS (U.S. CONST.
14TH AMEND.)
4. VIOLATION OF CIVIL
RIGHTS UNDER 42 U.S.C.
§1983
5. INVERSE
CONDEMNATION/
TAKING (CAL. CONST.,
ART. I §19)
6. VIOLATION OF EQUAL
PROTECTION (CAL.
CONST., ART. I § 7)
7. VIOLATION OF DUE
PROCESS (CAL. CONST.,
ART. I §§ 7, 15)
8. BREACH OF CONTRACT
9. BREACH OF COVENANT
OF GOOD FAITH AND
FAIR DEALING

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

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PARTIES, JURISDICTION AND VENUE

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1 jurisdiction over this action pursuant to 28 *U.S.C.* §1331, in that this action
2 arises under the Constitution and laws of the United States. In addition, this
3 Court has pendent and/or ancillary jurisdiction over the claims for relief alleged
4 herein under the Constitution of and under the laws of the State of California.
5 All federal constitutional provisions alleged herein are applicable to and in the
6 State of California and the City of Los Angeles through the 14th Amendment of
7 the Constitution of the United States.

8 PROCEDURAL HISTORY

- 9 5. On or about February 28, 2007, Plaintiffs filed this action. This action was
10 stayed until recently, under the *Pullman* abstention doctrine, until a prior state
11 court proceeding, Los Angeles Superior Court Case No. BS107637 (the "Prior
12 State Court Proceeding"), described in more detail below, was completed. In
13 addition, in order to preserve their rights under state law, Plaintiffs have filed an
14 additional complaint in state court, Case No. BC427941, containing, in essence,
15 the same Federal and State Constitutional and pendent/ancillary state claims
16 alleged herein (the "Current State Action"). However, Plaintiffs currently intend
17 to proceed with this federal action.
- 18 6. The complaint in the Prior State Court Proceeding originally contained, in
19 essence, the same federal and state constitutional claims presented herein, which
20 were combined with a petition for writ of mandamus. As is customary, the
21 Superior Court bifurcated the mandamus proceeding from the complaint
22 containing the constitutional claims and tried the mandamus petition first.
- 23 7. At the conclusion of the mandamus trial in the Prior State Court Proceeding, the
24 City filed pleadings and made arguments taking the position that, under the one
25 judgment rule, judgment could not be entered and a writ of mandamus could not
26 be issued against it unless and until the pending constitutional claims were
27 either voluntarily dismissed or adjudicated.
- 28

- 1 8. Because Plaintiffs needed to obtain the relief that would be afforded by the entry
2 of judgment and by the issuance of a writ of mandamus in a timely manner,
3 Plaintiffs filed a voluntary dismissal, without prejudice, of the complaint in the
4 Prior State Court Proceeding containing their constitutional claims.
- 5 9. After the conclusion of the trial in the Prior State Court Proceeding, on or about
6 December 14, 2007, the Superior Court, per the Honorable Judge Dzintra Janavs
7 (retired), issued a decision against the City and in favor of Plaintiffs holding, in
8 essence, that the City had violated Plaintiffs' rights under state law, as described
9 in more detail below. (A true and correct copy of the Statement of Decision
10 entered by the Superior Court is attached hereto as Exhibit "A.") The Statement
11 of Decision held, in essence and among other things, that the mandatory
12 affordable housing rental restrictions imposed by the City on the Piero II were
13 in direct conflict with the Costa-Hawkins Act and thus are preempted by it.
- 14 10. On or about February 13, 2008, Judge Janavs entered judgment and issued a writ
15 of mandamus against the City in the Prior State Court Proceeding. (A true and
16 correct copy of the judgment in the Prior State Court Proceeding is attached
17 hereto as Exhibit "B" and a true and correct copy of the peremptory writ of
18 mandate filed in the Prior State Court Proceeding is attached hereto as Exhibit
19 "C.") The peremptory writ of mandate enjoined the City from applying or
20 enforcing Section 11 of the Central City West Specific Plan, Ordinance 167,944,
21 as amended (the "Affordable Housing Provisions") with respect to the Piero II
22 project of Palmer that is the subject of the Trial Court Decision. The
23 aforementioned Statement of Decision and judgment and writ of mandate are
24 sometimes collectively referred to as the "Trial Court Decision" herein.
- 25 11. Subsequently, by a Notice of Appeal dated on or about February 26, 2008, the
26 City appealed the judgment in the Prior State Court Proceeding to the Second
27 District Court of Appeal.
28

- 1 12. On or about March 31, 2008, the City and Plaintiffs executed a Covenant and
2 Agreement that was subsequently recorded in the Los Angeles County
3 Recorder's Office on or about April 4, 2008 (the "Contract" or the "Covenant
4 and Agreement"). The Covenant and Agreement obligated the City, among
5 other things, to recommence and continue in good faith the processing of all
6 applications for building and other permits and clearances for the Piero II
7 project including shoring and excavation permits and foundation only permits,
8 and further obligated the City to process and treat Plaintiffs' applications and
9 requests for approval and permits in the same manner that is at least as favorable
10 and not more onerous than the manner in which other similar projects in the City
11 are processed and treated. (A true and correct copy of the Covenant and
12 Agreement along with the Los Angeles County Recorder's Office cover page is
13 attached hereto as Exhibit "D.")
- 14 13. In a unanimous decision and opinion issued on or about July 22, 2009 (the "Court
15 of Appeal Decision"), the Court of Appeal affirmed the judgment in the Prior
16 State Court Proceeding, holding, among other things, that Section 11.C's
17 requirements, as applied to Palmer's Piero II project in Condition 10, conflicts
18 with and is preempted by Costa Hawkins. (A true and correct copy of the Court
19 of Appeal Decision is attached hereto as Exhibit "E.")
- 20 14. Thereafter, the City filed a Petition for Review of the Court of Appeal Decision
21 with the California Supreme Court, which was denied. (A true and correct copy
22 of the California Supreme Court's denial of the Petition for Review is attached
23 hereto as Exhibit "F.") By virtue of the foregoing, the Court of Appeal Decision
24 is final and non-appealable.
- 25 15. The City also filed a request with the California Supreme Court that the Court
26 of Appeal Decision be depublished. This request was summarily denied.
- 27 16. In connection with the recent lifting of the stay of this federal action, due to the
28 conclusion of the Prior State Court Proceeding, the City took the position, on the

1 record, that this federal action cannot move forward unless and until Plaintiffs
2 have first adjudicated their constitutional claims in state court and that the City
3 will move to stay and/or dismiss this federal action. Plaintiffs disagree with this
4 position but, to avoid any prejudice that might result if this federal action were
5 dismissed and the Plaintiffs did not have a complaint on file that tolled any
6 applicable statutes of limitation with regard to Plaintiffs' constitutional claims,
7 out of caution, Plaintiffs filed a complaint in the Current State Action.
8 Depending on whether, when and how the Court in this federal action allows the
9 case to proceed here, Plaintiffs may seek to stay the Current State Action
10 pending adjudication of and proceedings in this federal action and hereby
11 reserves the right to do so.

12 **OTHER FACTS COMMON TO ALL CLAIMS FOR RELIEF**

- 13 17. Plaintiff's general partner, Mr. Geoffrey Palmer, has emerged from relatively
14 modest beginnings to become one of the Los Angeles County's premier
15 residential developers. Over the past 15 years, Mr. Palmer has been responsible
16 for creating over a thousand market-rate and affordable housing units in Los
17 Angeles. Mr. Palmer's partnerships provide Los Angeles with desperately
18 needed rental housing. Currently, Mr. Palmer is leading efforts to develop the
19 woefully neglected, downtown Central City West ("CCW") area. One of Mr.
20 Palmer's partnerships recently completed construction of 632 residential units
21 in the innovative Medici development, the first privately developed and
22 unsubsidized market-rate apartment development built in the CCW area in over
23 30 years (the "Medici").
- 24 18. In furtherance of these beneficial development efforts, on or about January 6,
25 2004, Plaintiff acquired the real property located at 609 St. Paul Avenue in the
26 City of Los Angeles (the "Property"), on which it intends to build the Piero II
27 project (the "Piero II") which previously was known as the Lorenzo project, a
28 mixed-use residential (350 units) and commercial (9,705 square feet)

1 development similar in style and theme to the Medici. Like the Medici, the units
2 in the Piero II project will be rental units, not units offered for sale like the rest
3 of the developments in the CCW area. Until recently, the Property was an
4 eyesore devoid of any aesthetic appeal or benefit to the community, consisting
5 mainly of a large parking lot. Before Mr. Palmer identified the Property for
6 renewal and development, the Property was a potent reminder of development
7 stagnation in the CCW area. Prior to its use as a parking lot, the Property
8 reportedly contained several decrepit hotel structures. Plaintiff is informed and
9 believes that the Property contained a rundown and dilapidated building that
10 was demolished by the prior owner in 1990 that consisted of approximately 34
11 individual hotel "rooms" 267 square feet in size that were without kitchens or
12 bathrooms and did not provide for parking. Plaintiff is informed and believes
13 that another hotel building, consisting of approximately 24 units, was also
14 located on the Property and was also demolished by the prior owner in 1986.
15 Plaintiff is informed and believes that the total square footage of the residential
16 hotels located on the Property was roughly 16,575 square feet.

17 19. As the owner of the Property and the applicant developer of the Piero II, at all
18 times relevant herein, Plaintiff has standing herein and maintains a beneficial
19 interest in this action.

20 20. On or about October 4, 2006, Plaintiff filed a Master Land Use Permit
21 Application (the "Application") seeking Planning Department approval for the
22 Piero II Project.

23 21. Due to its location, the Property and the Piero II fall under the ambit of certain
24 zoning and land-use provisions contained in the City's Westlake Community
25 Plan (the "General Plan") and the more geographically focused, Central City
26 West Specific Plan, Ordinance No. 167,944 (the "Specific Plan").

27 22. The provisions of the Specific Plan that are central to the claims raised in this
28 complaint are the so-called replacement dwelling provisions of the Specific

Plan, namely, Specific Plan §§11.C et seq. (the “Replacement Dwelling Provision” or the “RDP”). In short summary, the RDP is a replacement housing ordinance designed and intended, in essence, to require developers to replace affordable housing in new developments constructed on sites where affordable housing was previously demolished. The RDP reads, in relevant part, as follows (emphasis added):

“... **Section 11. HOUSING REQUIREMENTS**

C. Replacement Dwelling Units

2. Residential and Mixed Use Projects

- a. All multiple-family residential or Mixed Use Project Applicants shall be required to do one of the following, whichever results in the greater number of dwelling units:
 - (1) Document and replace, on a one-for-one basis in the form of new dwelling unit construction, Low and Very Low Income Dwelling Units and/or guest rooms demolished on the lot or lots on or after February 14, 1988; or
 - (2) Designate and reserve a total of 15% of the dwelling units within the Project as Low Income Dwelling Units. . .
- d. **In Lieu Credits.** In lieu of the requirements of this Subdivision, a multiple family residential Project Applicant may pay a fee.
 - (1) The in lieu fee for a required Very Low Income Dwelling Unit shall be \$100,576.14 per unit.
 - (2) The in lieu fee for a required Low Income Dwelling Unit shall be \$78,883.41 per unit. . .

E. Dwelling Unit Rent Levels

- 1. **Very Low Income Dwelling Unit.** The monthly rent level for a Very Low Income Dwelling Unit required pursuant to this Section shall not exceed 30% of 50% of the median monthly income for persons or families residing in the Los Angeles Standard Metropolitan Statistical Area. The median monthly income shall be as determined and published periodically by the Federal Housing and Urban Development Department.

2. **Low Income Dwelling Unit.** The monthly rent level for a Low Income Dwelling Unit required pursuant to this Section shall not exceed 30% of 80% of the median monthly income for persons or families residing in the Los Angeles Standard Metropolitan Statistical Area. The median monthly income shall be as determined and published periodically by the Federal Housing and Urban Development Department."

23. Based upon Plaintiff's prior dealings with Defendant regarding applying the RDP to Plaintiff's prior developments, pursuant to the administrative procedures set forth in LAMC §11.5.7, Plaintiff requested an exception and waiver from the requirements of the RDP from the Planning Commission such that Plaintiff would neither provide the required 15% inclusionary housing units as Low Income Dwelling Units nor pay an in-lieu fee for that purpose ("the Request"). Plaintiff did so, in order, among other things, to preempt the Planning Department's wrongful application of the RDP to the Piero II.

24. The Planning Commission took up the Request, and, after a series of public evidentiary hearings before the Planning Commission, on or about September 25, 2006, the Planning Commission issued its adjudicatory determination disapproving Plaintiff's Request.

25. Said Request disapproval, however, was part of the larger determination and approvals made by the Planning Commission in connection with its Specific Plan Project Permit Compliance that approved permit compliance subject to certain conditions. Condition No. 10, that was essentially a modification of the RDP requiring Plaintiff to satisfy one of three purported "alternatives" to the RDP in order to gain approval for the Piero II, provided as follows:

(A) Option A (Low Income Dwelling Units On-site). Plaintiff must set aside 60 dwelling units of the Project for low income housing pursuant to the terms of an agreement with the City that provides that these units will be used for low-income for 30 years, that they have a specified mix of studio, 1-bedroom and dual master apartments and the rent for the units be maintained at a specified level of rent;

(B) Option B (Low Income Dwelling Units Off-Site). Plaintiff must set aside 60 dwelling units (or portion thereof) of the Project for low income housing at an off-site location within the Central City

West Specific Plan Area and/or within the boundaries of City Council District 1, subject to certain conditions; or

(C) Option C Low Income Dwelling Units (In Lieu fees). As an alternative to providing the replacement housing units within the Project (either on-site or off-site), as set forth in Options A and B, Plaintiff may instead pay an in-lieu fee in the amount of \$96,182.17 for each of the 60 Low Income dwelling units, or a portion thereof.

26. Essentially, the Planning Commission's "disapproval" of the Request (and approval of the Project Permit Compliance based on certain conditions) was no more than a wrongful application of the full requirements of the RDP to the Piero II. Due to the wrongful and unjustified application of the RDP to the Piero II, Plaintiff notified the Planning Commission that it disagreed with the action disapproving of Plaintiff's Request and imposing Condition No. 10 on the Piero II, and, pursuant to the administrative procedures set forth by LAMC §11.5.7, on or about October 9, 2006, Plaintiff timely appealed the Planning Commission's decision to the Council. Plaintiff's appeal requested that the Council overrule the Planning Commission, expunge Condition No. 10 in its entirety, and approve the Request without condition.

27. Plaintiff's appeal to the Council was based, verbally and in writing, on several grounds for overturning the Planning Commission's decision, as alleged herein, which grounds are summarized as follows:

- a. The disapproval of the Request and the imposition of Condition No. 10 constituted a violation of the Costa-Hawkins Rental Housing Act (*Cal. Civ. Code* §§1954.50 *et seq.*) ("Costa-Hawkins") because, among other things, it would interfere with the applicant's right to set initial rents and because Costa-Hawkins preempts the area of rent control regulation;
- b. The disapproval of the Request and the imposition of Condition No. 10 violated the Mitigation Fee Act in that, among other things, in essence, there was no reasonable relationship between the exaction/fee and the cost to the public attributable to the development;

- 1 c. The disapproval of the Request and the imposition of Condition No.10
- 2 constituted an unconstitutional "regulatory" taking because the City did
- 3 not show the constitutionally required nexus between the exaction and the
- 4 governmental purpose involved, nor the constitutionally required rough
- 5 proportionality between the exaction and the public burdens created by
- 6 the Piero II;
- 7 d. The disapproval of the Request and the imposition of Condition No.10
- 8 constituted an unconstitutional "physical" taking because it required the
- 9 applicant to rent dwelling units to a particular class of people;
- 10 e. The disapproval of the Request and the imposition of Condition No.10
- 11 constituted a violation of the Equal Protection Clause because provisions
- 12 like the RDP have not been applied to similarly situated property owners
- 13 throughout the City of Los Angeles and/or because Condition No.10
- 14 violated the Piero II's future tenants' equal protection rights by requiring
- 15 them, in effect, to subsidize, in part, the affordable units; and
- 16 f. The disapproval of the Request and the imposition of Condition No.10
- 17 was an abuse of discretion because the decision was not in accordance
- 18 with the law, not supported by proper or adequate findings, and the
- 19 findings were not supported by substantial evidence.
- 20 28. On or about November 28, 2006, a preliminary public hearing on Plaintiff's
- 21 appeal was held before the Planning and Land Use Management Committee of
- 22 the City Council (the PLUM Committee). As a result of the hearing, the PLUM
- 23 Committee issued its report (the "PLUM Report") recommending that the
- 24 Council deny Plaintiff's Request and to enforce the RDP requirements.
- 25 29. On or about December 12, 2006, Plaintiff's final appeal was heard before the
- 26 Council as per LAMC §11.5.7 *et seq.* At the hearing, the PLUM Committee
- 27 submitted its PLUM Report for the Council's consideration. After a short,
- 28 public evidentiary hearing, the Council, in an abusive exercise of its

1 discretionary judgment, decided to adopt the findings and recommendations of
2 PLUM Report (the "City's Decision" or the "Action"). (A true and correct copy
3 of the PLUM Report and Council adoption thereof is attached hereto as Exhibit
4 "G", and incorporated herein by this reference as though set forth at length).
5 Plaintiff has now exhausted its administrative and other judicial remedies and
6 is entitled to seek redress from this Court.

7 30. In connection with the City's Decision, the Council adopted various findings
8 contained in the Council file, in the Planning Commission determinations,
9 and/or in the Planning Department staff reports (collectively, the "Findings").
10 These Findings were not based on substantial evidence and/or were not
11 sufficient to support the City's Decision.

12 31. Plaintiff is informed, believes and thereupon alleges that the City's Decision was
13 clearly politically motivated and not based on the merits, and that, among other
14 things, the Council was motivated by animus against Plaintiff and its principal,
15 Geoff Palmer, and/or intended to pander to the political agendas of the special
16 interest groups who opposed Plaintiff's project.

17 32. In making the City's Decision to adopt the PLUM Report, the Council thereby
18 denied Plaintiff's final administrative appeal to expunge Condition No. 10 and
19 upheld the disapproval of the Piero II's Request for an exception to the RDP.
20 Thus, the Council's vote required Plaintiff to comply with all terms and
21 provisions of the RDP, without exception.

22 33. Thereafter, Plaintiff and Palmer filed a petition for administrative mandamus,
23 alleging, among other things, that the application of section 11.C's affordable
24 housing requirement was preempted by and violated Costa-Hawkins, and
25 violated the United States and California Constitutions.

26 ///

27 ///

28 ///

FIRST CLAIM FOR RELIEF

(For Inverse Condemnation -

As against all Named Defendants)

34. Plaintiff hereby incorporates by this reference paragraphs 1 through 33, above, as though fully set forth at length herein.

35. **First**, the imposition of the RDP on the Piero II constitutes an illegal and discretionary, permanent and/or temporary “regulatory” taking of Plaintiff’s property in violation of *U.S. Const.*, 5th Amend. in that, among other things:

- a. Defendant’s application of the RDP to the Piero II would have had an adverse economic impact on Plaintiffs by, among other things, forcing Palmer to build and rent certain units in the Piero II at a discount below the market rate or to pay an in lieu fee;
- b. Defendant’s application of the RDP to the Piero II would have forced Palmer to rent at below market rates to certain tenants, constituting a “wealth transfer” from Palmer, the owner of the subject property, to certain tenants receiving the benefit of below market rate rental units, who thereby would receive a resulting “transfer premium;”
- c. Defendant’s application of the RDP to the Piero II would have created significant economic harm to Palmer, regardless of whether Palmer realized a rate of return comparable to other real estate developers, or not;
- d. Defendant’s application of the RDP to the Piero II adversely affected Palmer’s distinct investment-backed expectations and damaged Palmer’s ability to get financing for the Project;
- e. The character of the City’s action in applying the RDP to the Piero II constituted a government action that places a high burden on a few property owners that should more fairly be apportioned among the entire tax base because the public as a whole should pay for the benefit of

1 affordable housing, and not solely owners of real estate or a singular,
2 narrow and separate subset of landowners.

3 36. **Second**, the City's Decision to impose the RDP on the Piero II constituted an
4 illegal and discretionary, permanent and/or temporary "regulatory" taking of
5 Plaintiff's property in violation of *U.S. Const.*, 5th Amend. in that, among other
6 things, Defendant did not make specific findings, based on substantial evidence,
7 regarding the following matters, among others:

- 8 a. The existence of a **nexus** between Defendant's application of the RDP to
9 the Piero II and the stated purposes of the Specific Plan and the RDP
10 itself; and
11 b. That imposition of the RDP on the Piero II is **roughly proportional** to
12 the impact the Piero II would have on the CCW area's affordable housing
13 supply if the RDP is not applied.

14 37. **Third**, the City's Decision to impose the RDP on the Piero II constituted an
15 illegal and discretionary, permanent and/or temporary "regulatory" taking of
16 Plaintiff's property in that, among other things:

- 17 a. The imposition of the RDP on the Piero II did not substantially advance
18 any legitimate state interest and/or is not reasonably necessary for the
19 effectuation of a substantial public purpose in that, among other things,
20 the provision would not increase the production of affordable housing nor
21 improve the jobs-housing balance in the CCW area. In fact, since the
22 adoption of the Specific Plan, the provision has impeded and/or virtually
23 prevented development of housing in the CCW area so much that, until
24 the Medici project was built, Plaintiff is informed and believes that no
25 private and unsubsidized market-rate housing development had been
26 produced in the CCW area in over 30 years. In addition, Plaintiff is
27 informed and believes that Planning Department Staff Reports have
28 indicated and advised that a *repeal* of the RDP would stimulate

1 development in the CCW area and would, ultimately, serve to fulfill the
2 fundamental housing goals stated in the Specific Plan;

3 b. The imposition of the RDP on the Piero II did not substantially advance
4 any legitimate state interest in that, among other things, Defendant's
5 justification for the imposition of the RDP on the Piero II does not
6 reasonably relate to the Piero II, and the imposition of Section 11. C on
7 the Piero II does not reasonably serve the Specific Plan's stated interests
8 because, *inter alia*, Defendant has not and cannot produce substantial and
9 substantiated evidence demonstrating that residential development
10 projects in the CCW area, such as the Piero II, if not subjected to the
11 requirements of the RDP, would adversely affect the supply of affordable
12 housing in the area;

13 c. The imposition of the RDP on the Piero II would not permit Plaintiff to
14 profit and obtain a reasonable return on its investment. The RDP would
15 drastically reduce or even eliminate the Piero II's operating profits, thus
16 denying Plaintiff a reasonable return on its investment;

17 d. The imposition of the RDP on the Piero II would not provide Plaintiff any
18 benefits or rights that mitigate whatever financial burdens the imposition
19 of the RDP would place on Plaintiff.

20 e. The imposition of the RDP on the Piero II would prevent the highest and
21 best use of the Property in that the highest and best use of the Property is
22 the construction of market-rate housing. As planned, the Piero II will help
23 to alleviate the tremendous market-rate housing shortage in the CCW
24 area;

25 f. The imposition of the RDP on the Piero II would extinguish a
26 fundamental attribute of Plaintiff's ownership rights, in particular, *inter*
27 *alia*, the right to exclude others; and/or
28

1 g. The imposition of the RDP on the Piero II was an invalid government
2 demand and imposition on the subject property as a condition for granting
3 the permit.

4 38. **Fourth**, in addition or in the alternative, the imposition of Section 11.C.2.a.2 of
5 the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero
6 II constitutes illegal rent control that rises to the level of an illegal and
7 discretionary, permanent and/or temporary "regulatory" taking in that, among
8 other things:

9 a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
10 with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively would
11 have capped 15% of the Piero II's allowable rents at a fixed rate with
12 only limited increases and thus constituted an unauthorized and illegal
13 form of rent control;

14 b. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
15 with Specific Plan, Section 11.E *et seq.*) on the Piero II constitutes an
16 imposition of rent control without providing Plaintiff with any statutory
17 or administrative mechanisms to safeguard against the confiscatory
18 results of its application; thus, the imposition of these provisions on the
19 Property would have denied Plaintiff the ability to earn fair, just and
20 reasonable returns on its investment. The RDP does not contain any
21 mechanism or proviso designed to take into consideration, or make any
22 adjustments for, the value of investments made by Plaintiff with respect
23 to the Property, the amount of return Plaintiff needs to recoup those
24 investments, and the per-unit operating income required by Plaintiff to
25 adequately finance the development of Piero II and/or secure a fair, just
26 and reasonable return on those investments;

27 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
28 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an

imposition of rent control that left Plaintiff unprotected against, *inter alia*, the effects of inflation, anticipated or unanticipated increased operating costs, or anticipated or unanticipated capital expenditures;

- d. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an imposition of illegal rent control without providing Plaintiff with any mechanism for adjustments, abatements, exceptions or waivers therefrom even if Plaintiff had reasonable and legitimate reasons for said adjustments, abatements, exceptions or waivers; and/or
- e. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an imposition of illegal rent control in an arbitrary and discriminatory fashion in that, among other things, would have forced Plaintiff to set rates on 15% of the Piero II units at a base rate not in any way related to, or comparable with, the base rates for units subject to rent control outside the CCW area.

39. **Fifth**, in addition or in the alternative, the City's Decision to impose the RDP on the Piero II constituted an illegal and discretionary "physical" taking of Plaintiff's property in so far as, among other things:

- a. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II was a *per se* physical occupation of Plaintiff's property in that Plaintiff would have been forced to accept the occupation of low income tenants not already in residence, in violation of Plaintiff's fundamental right to exclude others from occupying or using the Property owned by Plaintiff;
- b. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II denied Plaintiff's economically viable use of the Property and property rights because, among other things, Plaintiff would have been unable to

1 continue to engage profitably in the business for which it invested its
 2 capital; Plaintiff was unable to finance and build any market-rate
 3 residential development on the Property on any reasonable basis;
 4 Plaintiff's right to dispose of the property for any sums reasonably
 5 approaching its investment was impaired; and/or Plaintiff's reasonable
 6 investment backed expectations have been diminished;

7 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
 8 did not substantially advance any legitimate state interest. The provision
 9 would not increase the production of affordable housing nor improve the
 10 jobs-housing balance in the CCW area. In fact, since the adoption of the
 11 Specific Plan, the provision has impeded and/or virtually prevented
 12 development of housing in the CCW area so much that, until the Medici
 13 project was built, Plaintiff is informed and believes that no private and
 14 unsubsidized market-rate housing development had been produced in the
 15 CCW area in over 30 years. In addition, recent Planning Department Staff
 16 Reports indicate and advise that a *repeal* of the RDP would stimulate
 17 development in the CCW area and would, ultimately, serve to fulfill the
 18 fundamental housing goals stated in the Specific Plan.

19 40. Defendant had adjudicatory discretion to apply, modify, interpret or waive
 20 provisions of the Specific Plan and/or the RDP as they apply to property
 21 developments covered within the Specific Plan area, and had the free discretion
 22 to approve or disapprove entitlement grants relating thereto or to make the
 23 determination that they did not apply to a particular project.

24 41. As a proximate result of the City's acts and omissions as alleged herein, the
 25 Piero II project and its financing have been delayed and prevented from moving
 26 forward and Plaintiff has suffered general, special, consequential, compensatory
 27 and/or incidental damages, including, but not limited to: losses due to a
 28 reduction in the fair market value of the Property and/or the Piero II project in

1 the tens of millions of dollars; a reduction of tens of millions of dollars in the
2 amount of financing Palmer is able to obtain for the Property and/or the Piero
3 II project due to the change in the credit and real estate markets that occurred
4 during the period of delay caused by the City; the amount of additional interest
5 on existing loans, real estate taxes and other carrying costs paid by Palmer
6 during the period of delay caused by the City, in the millions of dollars;
7 increased future costs of financing, in the tens of millions of dollars, including
8 additional interest and other sums that will have to be paid because, among other
9 things, during the period of delay, the credit and real estate markets have
10 changed and financing cannot now be found on terms as advantageous as they
11 were when Palmer could have moved forward with the Piero II project, but for
12 the acts and omissions of the City; lost opportunity and other costs, in the tens
13 of millions of dollars, due to the fact that Palmer will now have to invest
14 significantly more equity in the Piero II project because, during the period of
15 delay caused by the City, among other things, the credit and real estate markets
16 have changed such that loans for this type of project can only be obtained on
17 significantly lower loan to value or cost ratios, requiring a much larger
18 percentage of equity cushion and a much higher equity investment by Plaintiffs;
19 loss of use; and loss of rental and other revenues and profits, in the tens of
20 millions of dollars, all in an unascertained amount, according to proof.

21 42. Plaintiff has received no compensation for the taking of its Property.

22 43. To the extent that the aforementioned takings are deemed to have been
23 invalidated by any actions including, but not limited to, the aforementioned Trial
24 Court Decision and/or Court of Appeal Decision, Plaintiff alleges that the
25 aforementioned takings constitute temporary takings, because the City's
26 activities have already risen to the level of a taking of the Property and no
27 subsequent action by the City can relieve it of its duty to provide compensation
28 for the period during which the taking was effective. Invalidation of the subject

ordinance by Defendant or the decision to not now impose Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) upon the Piero II, without payment of fair value for the use of the property during such period, would be a constitutionally insufficient remedy.

44. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs because of this proceeding which are recoverable.

SECOND CLAIM FOR RELIEF

(For Violation of Equal Protection (As Applied) -

As against all Named Defendants)

45. Plaintiff hereby incorporates by this reference paragraphs 1 through 44, above, as though fully set forth at length herein.

46. **First**, the City's imposition of the RDP to the Piero II constituted a state action in violation of Plaintiff's equal protection rights under *U.S. Const.*, 14th Amend. In this regard, Plaintiff is informed and believes that Defendant has granted other CCW area property development applicants similarly situated to Plaintiff various modifications, waivers, agreements, and/or incentives in conjunction with the application of the RDP to those applicants' prospective developments. In this case and without any legitimate justification, Defendant tried to force Plaintiff to comply with the strict letter of the RDP, unmodified, even though no affordable housing units, or any other type of housing units have been located or demolished from the Property for over 16 years and that the Property had been used as a parking lot at all relevant times herein. There is no basis, rational or otherwise, for the City's Decision to try to force Plaintiff to abide by restrictions not placed on similarly situated landowners. Thus, Defendant has violated Plaintiff's equal protection rights under *U.S. Const.*, 14th Amend. and have, without a rational basis, unreasonably and arbitrarily applied the RDP to the Piero II while denying Plaintiff any of the modifications, waivers or incentives offered to similarly situated landowners.

1 47. **Second**, in addition or in the alternative, the affordable housing burdens created
2 by the RDP are imposed on a singular, narrow and separate class of City
3 landowners, including Plaintiff, who happen to own property located inside the
4 CCW sub-area. Plaintiff is informed and believes that no other sub-area of the
5 City is subject to the RDP and no other sub-area's Specific Plan imposes
6 affordable housing requirements similar to those contained in the RDP. In
7 addition, the provisions of the RDP were adopted without adequate study,
8 evaluation, findings, evidence or other consideration by Defendant sufficient to
9 demonstrate any basis, rational or otherwise, for treating CCW area landowners
10 and their properties, including Plaintiff, the Property and the Piero II, differently
11 from similarly situated landowners and properties located in other sub-areas of
12 the City. The problems proposed to be solved by enactment of the RDP, *inter*
13 *alia*, the lack of affordable housing and the jobs-housing imbalance, are
14 problems in virtually every sub-area of the City.

15 48. **Third**, in addition or in the alternative, the City's Decision to apply the RDP
16 to the Piero II violated the equal protection rights of future tenants of the Piero
17 II's "market-rate" units because, among other things, the RDP has the practical
18 effect of increasing housing costs for market-rate units. Under the RDP, market-
19 rate tenants would be required, in effect, to bear and subsidize, in part, the rents
20 of lower-income units imposed by the RDP. The Specific Plan does not
21 equitably apportion the economic burden of achieving compliance with the
22 RDP, and there is no basis, rational or otherwise, for requiring the separate class
23 of market-rate tenants to bear the burden of subsidizing rents of their low-
24 income neighbors. Plaintiff is and will be adversely affected and damaged by
25 the same. Thus, Defendant has violated Plaintiff's equal protection rights under
26 *U.S. Const.*, 14th Amend.

27 49. As a proximate result of the City's acts and omissions as alleged herein, the
28 Piero II project and its financing have been delayed and prevented from moving

1 forward and Plaintiff has suffered general, special, consequential, compensatory
2 and/or incidental damages, including, but not limited to: losses due to a
3 reduction in the fair market value of the Property and/or the Piero II project in
4 the tens of millions of dollars; a reduction of tens of millions of dollars in the
5 amount of financing Palmer is able to obtain for the Property and/or the Piero
6 II project due to the change in the credit and real estate markets that occurred
7 during the period of delay caused by the City; the amount of additional interest
8 on existing loans, real estate taxes and other carrying costs paid by Palmer
9 during the period of delay caused by the City, in the millions of dollars;
10 increased future costs of financing, in the tens of millions of dollars, including
11 additional interest and other sums that will have to be paid because, among other
12 things, during the period of delay, the credit and real estate markets have
13 changed and financing cannot now be found on terms as advantageous as they
14 were when Palmer could have moved forward with the Piero II project, but for
15 the acts and omissions of the City; lost opportunity and other costs, in the tens
16 of millions of dollars, due to the fact that Palmer will now have to invest
17 significantly more equity in the Piero II project because, during the period of
18 delay caused by the City, among other things, the credit and real estate markets
19 have changed such that loans for this type of project can only be obtained on
20 significantly lower loan to value or cost ratios, requiring a much larger
21 percentage of equity cushion and a much higher equity investment by Plaintiffs;
22 loss of use; and loss of rental and other revenues and profits, in the tens of
23 millions of dollars, all in an unascertained amount, according to proof.

24 50. Plaintiff has incurred and/or will incur attorney fees and other fees and costs
25 because of this proceeding, which are recoverable.

26 ///

27 ///

28 ///

THIRD CLAIM FOR RELIEF

(For Violation of Due Process (As Applied) -

As against all Named Defendants)

51. Plaintiff hereby incorporates by this reference paragraphs 1 through 50, above, as though fully set forth at length herein.

52. Defendant violated Plaintiff's due process rights under *U.S. Const.*, 14th Amend. in that, among other things:

- a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively capped the Piero II's allowable rents at a fixed rate with only limited increases and thus constituted an improper form of rent control;
- b. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II without providing Plaintiff with any statutory or administrative structural features that safeguard against confiscatory results in applying such controls. Thus, the imposition of these provisions on the Property denied Plaintiff the ability to earn fair, just and reasonable returns on its investment. These provisions do not contain any mechanism or proviso designed to take into consideration, or make any adjustments for, the value of investments made by Plaintiff with respect to the Property, the amount of return Plaintiff needs to recoup this investment, and the per-unit operating income required by Plaintiff to adequately finance the development of the Piero II and/or as secure a fair, just and reasonable return on its investment;
- c. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II in a manner which left Plaintiff unprotected against,

1 *inter alia*, the effects of inflation, anticipated or unanticipated increased
2 operating costs, or anticipated or unanticipated capital expenditures;

3 d. Defendant has imposed the illegal rent controls contained in Section
4 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et*
5 *seq.*) without providing Plaintiff with any mechanism for adjustments,
6 abatements, exceptions or waivers therefrom even if Plaintiff had
7 reasonable and legitimate reasons for said adjustments, abatements,
8 exceptions or waivers; and/or

9 e. Defendant has imposed the illegal rent controls contained in Section
10 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et*
11 *seq.*) without any basis, rational or otherwise, for forcing Plaintiff to
12 accept initial base rents far below the market-value of those units and far
13 below the initial base rents of similarly situated property owners subject
14 to rent control within the City and County of Los Angeles.

15 53. Defendant had adjudicatory discretion to apply, modify, or waive provisions of
16 the Specific Plan as they apply to property developments within the CCW area
17 and had the discretion to approve or disapprove entitlement grants relating
18 thereto or to make the determination that they did not apply to a particular
19 project.

20 54. As a proximate result of the City's acts and omissions as alleged herein, the
21 Piero II project and its financing have been delayed and prevented from moving
22 forward and Plaintiff has suffered general, special, consequential, compensatory
23 and/or incidental damages, including, but not limited to: losses due to a
24 reduction in the fair market value of the Property and/or the Piero II project in
25 the tens of millions of dollars; a reduction of tens of millions of dollars in the
26 amount of financing Palmer is able to obtain for the Property and/or the Piero
27 II project due to the change in the credit and real estate markets that occurred
28 during the period of delay caused by the City; the amount of additional interest

on existing loans, real estate taxes and other carrying costs paid by Palmer during the period of delay caused by the City, in the millions of dollars; increased future costs of financing, in the tens of millions of dollars, including additional interest and other sums that will have to be paid because, among other things, during the period of delay, the credit and real estate markets have changed and financing cannot now be found on terms as advantageous as they were when Palmer could have moved forward with the Piero II project, but for the acts and omissions of the City; lost opportunity and other costs, in the tens of millions of dollars, due to the fact that Palmer will now have to invest significantly more equity in the Piero II project because, during the period of delay caused by the City, among other things, the credit and real estate markets have changed such that loans for this type of project can only be obtained on significantly lower loan to value or cost ratios, requiring a much larger percentage of equity cushion and a much higher equity investment by Plaintiffs; loss of use; and loss of rental and other revenues and profits, in the tens of millions of dollars, all in an unascertained amount, according to proof.

55. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs because of this proceeding, which are recoverable.

FOURTH CLAIM FOR RELIEF

(For Violation of Civil Rights under 42 U.S.C. §1983 -

As against all Named Defendants)

56. Plaintiff and Palmer hereby incorporates by this reference paragraphs 1 through 55, above, as though fully set forth at length herein.

57. The City's Decision to impose the RDP on the Piero II was a decision committed by government officials under color of state law. The City's Decision constitutes a violation of Plaintiff's and Palmer's civil rights under 42 U.S.C. §1983 in that, among other things, under color of the Specific Plan and/or RDP, Defendant has subjected Plaintiff and Palmer to a deprivation of

1 their rights and privileges under the United States Constitution as set forth
2 herein.

3 58. Additionally, Plaintiffs are informed and believe, and based thereon allege that
4 Defendant's animus toward Plaintiff and Palmer and their violation of Plaintiff's
5 and Palmer's constitutional rights is politically motivated and is based on,
6 among other things, Councilman Ed Reyes' personal animus against Plaintiff
7 and its general partner, Palmer, for, among other things, the prior litigations
8 between the City of Los Angeles and Palmer, in which Palmer and his entities
9 have litigated successfully against the City's unlawful conduct. In each of these
10 prior litigations, the subject property in dispute has been in Councilman Reyes'
11 district. Councilman Reyes has done little more than pander to the pro-tenant
12 political factions in a transparent attempt to garner their political support. It
13 appears that in retaliation for Palmer's prior successful efforts in challenging the
14 City's and Councilman Reyes' conduct in court, Defendant has sought to exact
15 a certain measure of punishment and "payback" (under the guise of acting under
16 state law) against Plaintiff and Palmer all in violation of Plaintiff's and Palmer's
17 constitutionally protected rights. Being motivated by improper animus, in
18 derogation of Plaintiff's and Palmer's constitutional rights, the City's Decision
19 is actionable under 42 U.S.C. §1983.

20 59. As a proximate result of the City's acts and omissions as alleged herein, the
21 Piero II project and its financing have been delayed and prevented from moving
22 forward and Plaintiff has suffered general, special, consequential, compensatory
23 and/or incidental damages, including, but not limited to: losses due to a
24 reduction in the fair market value of the Property and/or the Piero II project in
25 the tens of millions of dollars; a reduction of tens of millions of dollars in the
26 amount of financing Palmer is able to obtain for the Property and/or the Piero
27 II project due to the change in the credit and real estate markets that occurred
28 during the period of delay caused by the City; the amount of additional interest

on existing loans, real estate taxes and other carrying costs paid by Palmer during the period of delay caused by the City, in the millions of dollars; increased future costs of financing, in the tens of millions of dollars, including additional interest and other sums that will have to be paid because, among other things, during the period of delay, the credit and real estate markets have changed and financing cannot now be found on terms as advantageous as they were when Palmer could have moved forward with the Piero II project, but for the acts and omissions of the City; lost opportunity and other costs, in the tens of millions of dollars, due to the fact that Palmer will now have to invest significantly more equity in the Piero II project because, during the period of delay caused by the City, among other things, the credit and real estate markets have changed such that loans for this type of project can only be obtained on significantly lower loan to value or cost ratios, requiring a much larger percentage of equity cushion and a much higher equity investment by Plaintiffs; loss of use; and loss of rental and other revenues and profits, in the tens of millions of dollars, all in an unascertained amount, according to proof.

60. Additionally, Plaintiff and Palmer have incurred and/or will incur attorney's fees and other fees and costs because of this proceeding, which are recoverable pursuant to 42 U.S.C. §1988.

FIFTH CLAIM FOR RELIEF

(For Inverse Condemnation Under the California Constitution (California Const., Art. I, §19) - As against all Named Defendants)

61. Plaintiff hereby incorporates by this reference paragraphs 1 through 60, above, as though fully set forth at length herein.

62. **First**, the imposition of the RDP on the Piero II constitutes an illegal and discretionary, permanent and/or temporary "regulatory" taking of Plaintiff's property in violation of *Cal. Const.*, Art. I, § 19, in that, among other things:

- a. Defendant's application of the RDP to the Piero II would have had an adverse economic impact on Plaintiffs by, among other things, forcing Palmer to build and rent certain units in the Piero II at a discount below the market rate or to pay an in lieu fee;
- b. Defendant's application of the RDP to the Piero II, would have forced Palmer to rent at below market rates to certain tenants, constituting a "wealth transfer" from Palmer, the owner of the subject property, to certain tenants receiving the benefit of below market rate rental units, who thereby would receive a resulting "transfer premium;"
- c. Defendant's application of the RDP to the Piero II would have created significant economic harm to Palmer, regardless of whether Palmer realized a rate of return comparable to other real estate developers, or not;
- d. Defendant's application of the RDP to the Piero II adversely affected Palmer's distinct investment-backed expectations and damaged Palmer's ability to get financing for the project;
- e. The character of the City's action in applying the RDP to the Piero II constituted a government action that places a high burden on a few property owners that should more fairly be apportioned among the entire tax base because the public as a whole should pay for the benefit of affordable housing, and not solely owners of real estate or a singular, narrow and separate subset of landowners.

63. **Second**, the City's Decision to impose the RDP on the Piero II constituted an illegal and discretionary, permanent and/or temporary "regulatory" taking of Plaintiff's property in violation of *Cal. Const.*, Art. I, §19 in that, among other things, Defendant did not make specific findings, based on substantial evidence, regarding the following matters, among others:

- a. The existence of a **nexus** between Defendant's application of the RDP to the Piero II and the stated purposes of the Specific Plan and the RDP itself; and
- b. That imposition of the RDP on the Piero II is **roughly proportional** to the impact the Piero II would have on the CCW area's affordable housing supply if the RDP is not applied.

64. **Third**, the City's Decision to impose the RDP on the Piero II constitutes an illegal and discretionary permanent and/or temporary "regulatory" taking of Plaintiff's property in violation of *Cal. Const.*, Art. I, §19 in that, among other things:

- a. The imposition of the RDP on the Piero II did not substantially advance any legitimate state interest and/or is not reasonably necessary for the effectuation of a substantial public purpose in that, among other things, the provision would not increase the production of affordable housing nor improve the jobs-housing balance in the CCW area. In fact, since the adoption of the Specific Plan, the provision has impeded and/or virtually prevented development of housing in the CCW area so much that, until the Medici project was built, Plaintiff is informed and believes that no private and unsubsidized market-rate housing development had been produced in the CCW area in over 30 years. In addition, Plaintiff is informed and believes that Planning Department Staff Reports have indicated and advised that a *repeal* of the RDP would stimulate development in the CCW area and would, ultimately, serve to fulfill the fundamental housing goals stated in the Specific Plan;
- b. The imposition of the RDP on the Piero II did not substantially advance any legitimate state interest in that, among other things, Defendant's justification for the imposition of the RDP on the Piero II does not reasonably relate to the Piero II, and the imposition of Section 11. C on

the Piero II does not reasonably serve the Specific Plan's stated interests because, *inter alia*, Defendant has not and cannot produce substantial and substantiated evidence demonstrating that residential development projects in the CCW area, such as the Piero II, if not subjected to the requirements of the RDP, would adversely affect the supply of affordable housing in the area;

- c. The imposition of the RDP on the Piero II would not permit Plaintiff to profit and obtain a reasonable return on its investment. The RDP would drastically reduce or even eliminate the Piero II's operating profits, thus denying Plaintiff a reasonable return on its investment;
- d. The imposition of the RDP on the Piero II does not provide Plaintiff any benefits or rights that mitigate whatever financial burdens the imposition of the RDP would place on Plaintiff.
- e. The imposition of the RDP on the Piero II would prevent the highest and best use of the Property in that the highest and best use of the Property is the construction of market-rate housing. As planned, the Piero II will help to alleviate the tremendous market-rate housing shortage in the CCW area;
- f. The imposition of the RDP on the Piero II would extinguish a fundamental attribute of Plaintiff's ownership rights, in particular, *inter alia*, the right to exclude others; and/or
- g. The imposition of the RDP on the Piero II is an invalid government demand and imposition on the subject property as a condition for granting the permit.

65. **Fourth**, in addition or in the alternative, the imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II constitutes illegal rent control that rises to the level of a permanent and/or

1 temporary "regulatory" taking of Plaintiff's property in violation of *Cal. Const.*,
2 Art. I, §19 in that, among other things:

- 3 a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
4 with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively would
5 have capped 15% of the Piero II's allowable rents at a fixed rate with
6 only limited increases and thus constituted an unauthorized and illegal
7 form of rent control;
- 8 b. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
9 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
10 imposition of rent control without providing Plaintiff with any statutory
11 or administrative mechanisms to safeguard against the confiscatory
12 results of its application; thus, the imposition of these provisions on the
13 Property would have denied Plaintiff the ability to earn fair, just and
14 reasonable returns on its investment. The RDP does not contain any
15 mechanism or proviso designed to take into consideration, or make any
16 adjustments for, the value of investments made by Plaintiff with respect
17 to the Property, the amount of return Plaintiff needs to recoup those
18 investments, and the per-unit operating income required by Plaintiff to
19 adequately finance the development of Piero II and/or secure a fair, just
20 and reasonable return on those investments;
- 21 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
22 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
23 imposition of rent control which left Plaintiff unprotected against, *inter*
24 *alia*, the effects of inflation, anticipated or unanticipated increased
25 operating costs, or anticipated or unanticipated capital expenditures;
- 26 d. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
27 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
28 imposition of illegal rent control without providing Plaintiff with any

1 mechanism for adjustments, abatements, exceptions or waivers therefrom
2 even if Plaintiff has reasonable and legitimate reasons for said
3 adjustments, abatements, exceptions or waivers; and/or

- 4 e. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction
5 with Specific Plan, Section 11.E *et seq.*) on the Piero II constituted an
6 imposition of illegal rent control in an arbitrary and discriminatory
7 fashion in that, among other things, would have forced Plaintiff to set
8 rates on 15% of the Piero II units at a base rate not in any way related to,
9 or comparable with, the base rates for units subject to rent control outside
10 the CCW area.

11 66. **Fifth**, in addition or in the alternative, the City's Decision to impose the RDP
12 on the Piero II constituted an illegal and discretionary, permanent and/or
13 temporary "physical" taking of Plaintiff's property in so far as, among other
14 things:

- 15 a. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
16 was a *per se* physical occupation of Plaintiff's property in that Plaintiff
17 would have been forced to accept the occupation of low income tenants
18 not already in residence, in violation of Plaintiff's fundamental right to
19 exclude others from occupying or using the Property owned by Plaintiff;
20
21 b. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
22 denied Plaintiff's economically viable use of the Property and property
23 rights because, among other things, Plaintiff would have been unable to
24 continue to engage profitably in the business for which it invested its
25 capital; Plaintiff was unable to finance and build any market-rate
26 residential development on the Property on any reasonable basis;
27 Plaintiff's right to dispose of the property for any sums reasonably
28

1 approaching its investment is impaired; and/or Plaintiff's reasonable
2 investment backed expectations have been diminished;

- 3 c. Defendant's imposition of Section 11.C.2.a.2 of the RDP on the Piero II
4 did not substantially advance any legitimate state interest. The provision
5 would not increase the production of affordable housing nor improve the
6 jobs-housing balance in the CCW area. In fact, since the adoption of the
7 Specific Plan, the provision has impeded and/or virtually prevented
8 development of housing in the CCW area so much that, until the Medici
9 project was built, Plaintiff is informed and believes that no private and
10 unsubsidized market-rate housing development had been produced in the
11 CCW area in over 30 years. In addition, recent Planning Department Staff
12 Reports indicate and advise that a *repeal* of the RDP would stimulate
13 development in the CCW area and would, ultimately, serve to fulfill the
14 fundamental housing goals stated in the Specific Plan.

15 67. Defendant had adjudicatory discretion to apply, modify, interpret or waive
16 provisions of the Specific Plan and/or the RDP as they apply to property
17 developments covered within the Specific Plan area, and had the free discretion
18 to approve or disapprove entitlement grants relating thereto or to make the
19 determination that they did not apply to a particular project.

20 68. As a proximate result of the City's acts and omissions as alleged herein, the
21 Piero II project and its financing have been delayed and prevented from moving
22 forward and Plaintiff has suffered general, special, consequential, compensatory
23 and/or incidental damages, including, but not limited to: losses due to a
24 reduction in the fair market value of the Property and/or the Piero II project in
25 the tens of millions of dollars; a reduction of tens of millions of dollars in the
26 amount of financing Palmer is able to obtain for the Property and/or the Piero
27 II project due to the change in the credit and real estate markets that occurred
28 during the period of delay caused by the City; the amount of additional interest

1 on existing loans, real estate taxes and other carrying costs paid by Palmer
2 during the period of delay caused by the City, in the millions of dollars;
3 increased future costs of financing, in the tens of millions of dollars, including
4 additional interest and other sums that will have to be paid because, among other
5 things, during the period of delay, the credit and real estate markets have
6 changed and financing cannot now be found on terms as advantageous as they
7 were when Palmer could have moved forward with the Piero II project, but for
8 the acts and omissions of the City; lost opportunity and other costs, in the tens
9 of millions of dollars, due to the fact that Palmer will now have to invest
10 significantly more equity in the Piero II project because, during the period of
11 delay caused by the City, among other things, the credit and real estate markets
12 have changed such that loans for this type of project can only be obtained on
13 significantly lower loan to value or cost ratios, requiring a much larger
14 percentage of equity cushion and a much higher equity investment by Plaintiffs;
15 loss of use; and loss of rental and other revenues and profits, in the tens of
16 millions of dollars, all in an unascertained amount, according to proof.

17 69. Plaintiff has received no compensation for the taking of its Property.

18 70. To the extent that the aforementioned takings are deemed to have been
19 invalidated by any actions including, but not limited to, the aforementioned Trial
20 Court Decision and/or Court of Appeal Decision, Plaintiff alleges that the
21 aforementioned takings constitute temporary takings, because the City's
22 activities have already risen to the level of a taking of the Property and no
23 subsequent action by the City can relieve it of its duty to provide compensation
24 for the period during which the taking was effective. Invalidation of the subject
25 ordinance by Defendant or the decision to not now impose Section 11.C.2.a.2
26 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) upon the
27 Piero II, without payment of fair value for the use of the property during such
28 period, would be a constitutionally insufficient remedy.

1 71. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs
 2 because of this proceeding, including, but not limited to, those which are
 3 recoverable pursuant to *Code of Civ. Proc.* §1036.

4 **SIXTH CLAIM FOR RELIEF**

5 **(For Violation of Equal Protection (As Applied) Under**
 6 **The California Constitution (California Const., Art. I, §7) -**
 7 **As against all Named Defendants)**

8 72. Plaintiff hereby incorporates by this reference paragraphs 1 through 71, above,
 9 as though fully set forth at length herein.

10 73. **First**, the City's imposition of the RDP to the Piero II constituted a state action
 11 in violation of Plaintiff's equal protection rights under *Cal. Const.*, Art. I §7. In
 12 this regard, among other things, Plaintiff is informed and believes that
 13 Defendant has granted other CCW area property development applicants
 14 similarly situated to Plaintiff various modifications, waivers, agreements, and/or
 15 incentives in conjunction with the application of the RDP to those applicants'
 16 prospective developments. In this case and without any legitimate justification,
 17 Defendant tried to force Plaintiff to comply with the strict letter of the RDP,
 18 unmodified, even though no affordable housing units, or any other type of
 19 housing units have been located or demolished from the property for over 16
 20 years and that the property had been used as a parking lot at all relevant times
 21 herein. There is no basis, rational or otherwise, for the City's Decision to try to
 22 force Plaintiff to abide by restrictions not placed on similarly situated
 23 landowners. Thus, Defendant has violated Plaintiff's equal protection rights
 24 under *Cal. Const.*, Art. I §7 and have, without a rational basis, unreasonably and
 25 arbitrarily applied the RDP to the Piero II while denying Plaintiff any of the
 26 modifications, waivers or incentives offered to similarly situated landowners.

27 74. **Second**, in addition or in the alternative, the affordable housing burdens created
 28 by the RDP are imposed on a singular, narrow and separate class of City

landowners, including Plaintiff, who happen to own property located inside the CCW sub-area. Plaintiff is informed and believes that no other sub-area of the City is subject to the RDP and no other sub-area's Specific Plan imposes affordable housing requirements similar to those contained in the RDP. In addition, the provisions of the RDP were adopted without adequate study, evaluation, findings, evidence or other consideration by Defendant sufficient to demonstrate any basis, rational or otherwise, for treating CCW area landowners and their properties, including Plaintiff, the Property and the Piero II, differently from similarly situated landowners and properties located in other sub-areas of the City. The problems proposed to be solved by enactment of the RDP, *inter alia*, the lack of affordable housing and the jobs-housing imbalance, are problems in virtually every sub-area of the City.

75. As a proximate result of the City's acts and omissions as alleged herein, the Piero II project and its financing have been delayed and prevented from moving forward and Plaintiff has suffered general, special, consequential, compensatory and/or incidental damages, including, but not limited to: losses due to a reduction in the fair market value of the Property and/or the Piero II project in the tens of millions of dollars; a reduction of tens of millions of dollars in the amount of financing Palmer is able to obtain for the Property and/or the Piero II project due to the change in the credit and real estate markets that occurred during the period of delay caused by the City; the amount of additional interest on existing loans, real estate taxes and other carrying costs paid by Palmer during the period of delay caused by the City, in the millions of dollars; increased future costs of financing, in the tens of millions of dollars, including additional interest and other sums that will have to be paid because, among other things, during the period of delay, the credit and real estate markets have changed and financing cannot now be found on terms as advantageous as they were when Palmer could have moved forward with the Piero II project, but for

the acts and omissions of the City; lost opportunity and other costs, in the tens of millions of dollars, due to the fact that Palmer will now have to invest significantly more equity in the Piero II project because, during the period of delay caused by the City, among other things, the credit and real estate markets have changed such that loans for this type of project can only be obtained on significantly lower loan to value or cost ratios, requiring a much larger percentage of equity cushion and a much higher equity investment by Plaintiffs; loss of use; and loss of rental and other revenues and profits, in the tens of millions of dollars, all in an unascertained amount, according to proof.

76. Plaintiff has incurred and/or will incur attorney fees and other fees and costs because of this proceeding, which are recoverable.

SEVENTH CLAIM FOR RELIEF

**(For Violation of Due Process (As Applied) Under the
California Constitution (California Const., Art. I, §§7, 15) -**

As against all Named Defendants)

77. Plaintiff hereby incorporates by this reference paragraphs 1 through 76, above, as though fully set forth at length herein.

78. Defendant violated Plaintiff's due process rights under *Cal Const.*, Art. I, §§ 7, 15 in that, among other things:

- a. Defendant's imposition of Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II effectively capped the Piero II's allowable rents at a fixed rate with only limited increases and thus constituted an improper form of rent control;
- b. Defendant has imposed the illegal rent controls contained in Section 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et seq.*) on the Piero II without providing Plaintiff with any statutory or administrative structural features that safeguard against confiscatory results in applying such controls. Thus, the imposition of these provisions

1 on the Property denied Plaintiff the ability to earn fair, just and reasonable
2 returns on its investment. These provisions do not contain any
3 mechanism or proviso designed to take into consideration, or make any
4 adjustments for, the value of investments made by Plaintiff with respect
5 to the Property, the amount of return Plaintiff needs to recoup this
6 investment, and the per-unit operating income required by Plaintiff to
7 adequately finance the development of the Piero II and/or as secure a fair,
8 just and reasonable return on its investment;

9 c. Defendant has imposed the illegal rent controls contained in Section
10 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et*
11 *seq.*) on the Piero II in a manner which left Plaintiff unprotected against,
12 *inter alia*, the effects of inflation, anticipated or unanticipated increased
13 operating costs, or anticipated or unanticipated capital expenditures;

14 d. Defendant has imposed the illegal rent controls contained in Section
15 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et*
16 *seq.*) without providing Plaintiff with any mechanism for adjustments,
17 abatements, exceptions or waivers therefrom even if Plaintiff had
18 reasonable and legitimate reasons for said adjustments, abatements,
19 exceptions or waivers; and/or

20 e. Defendant has imposed the illegal rent controls contained in Section
21 11.C.2.a.2 of the RDP (in conjunction with Specific Plan, Section 11.E *et*
22 *seq.*) without any basis, rational or otherwise, for forcing Plaintiff to
23 accept initial base rents far below the market-value of those units and far
24 below the initial base rents of similarly situated property owners subject
25 to rent control within the City and County of Los Angeles.

26 79. Defendant had adjudicatory discretion to apply, modify, or waive provisions of
27 the Specific Plan as they apply to property developments within the CCW area
28 and had the discretion to approve or disapprove entitlement grants relating

1 thereto or to make the determination that they did not apply to a particular
2 project.

3 80. As a proximate result of the City's acts and omissions as alleged herein, the
4 Piero II project and its financing have been delayed and prevented from moving
5 forward and Plaintiff has suffered general, special, consequential, compensatory
6 and/or incidental damages, including, but not limited to: losses due to a
7 reduction in the fair market value of the Property and/or the Piero II project in
8 the tens of millions of dollars; a reduction of tens of millions of dollars in the
9 amount of financing Palmer is able to obtain for the Property and/or the Piero
10 II project due to the change in the credit and real estate markets that occurred
11 during the period of delay caused by the City; the amount of additional interest
12 on existing loans, real estate taxes and other carrying costs paid by Palmer
13 during the period of delay caused by the City, in the millions of dollars;
14 increased future costs of financing, in the tens of millions of dollars, including
15 additional interest and other sums that will have to be paid because, among other
16 things, during the period of delay, the credit and real estate markets have
17 changed and financing cannot now be found on terms as advantageous as they
18 were when Palmer could have moved forward with the Piero II project, but for
19 the acts and omissions of the City; lost opportunity and other costs, in the tens
20 of millions of dollars, due to the fact that Palmer will now have to invest
21 significantly more equity in the Piero II project because, during the period of
22 delay caused by the City, among other things, the credit and real estate markets
23 have changed such that loans for this type of project can only be obtained on
24 significantly lower loan to value or cost ratios, requiring a much larger
25 percentage of equity cushion and a much higher equity investment by Plaintiffs;
26 loss of use; and loss of rental and other revenues and profits, in the tens of
27 millions of dollars, all in an unascertained amount, according to proof.
28

1 81. Plaintiff has incurred and/or will incur attorneys' fees and other fees and costs
2 because of this proceeding, which are recoverable.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(For Breach of Written Contract**

5 **As against all Named Defendants)**

6 82. Plaintiff and Palmer hereby incorporate by this reference paragraphs 1
7 through 81, above, as though fully set forth at length herein.

8 83. On or about March 31, 2008, the City and Plaintiffs executed a Covenant and
9 Agreement, also referred to herein as the "Contract" (and attached hereto as
10 Exhibit "D") that was subsequently recorded in the Los Angeles County
11 Recorder's Office on or about April 4, 2008. The Contract contained adequate
12 consideration and obligated the City, among other things, to recommence in
13 good faith and continue the processing of all applications for building and other
14 permits and clearances for the Piero II project including shoring and excavation
15 permits and foundation only permits (collectively, the "Permits and
16 Applications"), and further obligated the City to process and treat Plaintiffs'
17 applications and requests for approval and permits in the same manner that is at
18 least as favorable and not more onerous than the manner in which other similar
19 projects in the City are processed and treated.

20 84. In breach of the Contract, among other things, the City has failed to process in
21 good faith all applications for building and other permits and clearances for the
22 Piero II project and/or failed to treat Plaintiffs' applications and requests for
23 approval and permits in the same manner that is at least as favorable and not
24 more onerous than the manner in which other similar projects in the City are
25 processed and treated. As part of the City's obligation to process the
26 Applications and Permits, there was an implied covenant that the City issue all
27 necessary permits in a timely manner, once Plaintiffs' Applications and Permits
28 had been processed (the "Implied Permit Issuance Covenant").

1 85. Plaintiffs have fully performed all of their obligations under the Contract except
2 for any of their obligations which may have been excused by the breach of the
3 City.

4 86. Plaintiffs at all times have been and still are ready, willing and able to perform
5 under the Contract. The City, on the other hand, at all relevant times herein, has
6 not been ready, willing and able to perform under the Contract.

7 87. The material breaches of the Defendant, as alleged herein, has proximately
8 caused, are causing and will continue to cause damage to the Plaintiffs. By
9 virtue of the foregoing, the Plaintiffs have suffered damages and injuries, justify-
10 ing an award of general, compensatory, incidental, consequential, special
11 damages and/or other damages, in an unascertained amount, according to proof,
12 but in excess of the minimum jurisdictional limits of this Court.

13 88. As a proximate result of the City's acts and omissions as alleged herein, the
14 Piero II project and its financing have been delayed and prevented from moving
15 forward and Plaintiff has suffered general, special, consequential, compensatory
16 and/or incidental damages, including, but not limited to: losses due to a
17 reduction in the fair market value of the Property and/or the Piero II project in
18 the tens of millions of dollars; a reduction of tens of millions of dollars in the
19 amount of financing Palmer is able to obtain for the Property and/or the Piero II
20 project due to the change in the credit and real estate markets that occurred
21 during the period of delay caused by the City; the amount of additional interest
22 on existing loans, real estate taxes and other carrying costs paid by Palmer
23 during the period of delay caused by the City, in the millions of dollars;
24 increased future costs of financing, in the tens of millions of dollars, including
25 additional interest and other sums that will have to be paid because, among other
26 things, during the period of delay, the credit and real estate markets have
27 changed and financing cannot now be found on terms as advantageous as they
28 were when Palmer could have moved forward with the Piero II project, but for

1 the acts and omissions of the City; lost opportunity and other costs, in the tens
2 of millions of dollars, due to the fact that Palmer will now have to invest
3 significantly more equity in the Piero II project because, during the period of
4 delay caused by the City, among other things, the credit and real estate markets
5 have changed such that loans for this type of project can only be obtained on
6 significantly lower loan to value or cost ratios, requiring a much larger
7 percentage of equity cushion and a much higher equity investment by Plaintiffs;
8 loss of use; and loss of rental and other revenues and profits, in the tens of
9 millions of dollars, all in an unascertained amount, according to proof.

10 89. In additional and/or in the alternative, Plaintiff are entitled to injunctive relief
11 and/or a decree of specific performance, including, but not limited to, the
12 following:

- 13 a. commanding, ordering, instructing and/or mandating that the City comply
14 with all terms of the Contract contained herein;
- 15 b. commanding, instructing and/or mandating that the City recommence and
16 continue in good faith the processing of all applications for building and
17 other permits and clearances for the Piero II project including shoring and
18 excavation permits and foundation only permits, and further ordering the
19 City to process and treat Plaintiffs' applications and requests for approval
20 and permits in the same manner that is at least as favorable and not more
21 onerous than the manner in which other similar projects in the City are
22 processed and treated;
- 23 c. ordering the City to issue all such permits once all applicable
24 requirements have been met; and
- 25 d. injunctive relief proscribing and enjoining the City from continuing to
26 violate Plaintiff's constitutional rights in the manner described herein
27 and/or from taking or causing to be taken any actions which would
28

interfere with Plaintiffs' Permits and Applications for the Piero II project, and from proceeding with and completing said project.

NINTH CLAIM FOR RELIEF

(For Breach of the Covenant of Good Faith and Fair Dealing

As against all Named Defendants)

90. Plaintiff and Palmer hereby incorporate by this reference paragraphs 1 through 89, above, as though fully set forth at length herein.

91. In every contract governed by the laws of the State of California there exists an implied covenant of good faith and fair dealing.

92. The aforementioned Contract was entered into and executed in the State of California, was performed or to be performed in the State of California and is governed by the laws of the State of California.

93. Within the last year and/or within the year prior to the filing of the Complaint, Plaintiffs discovered that the City breached the covenant of good faith and fair dealing in the Contract thereby depriving Plaintiffs of the benefit of the bargain, by, among other things, breaching the Implied Permit Issuance Covenant, failing to recommence and continue in good faith the processing of all applications for building and other permits and clearances for the Piero II project and/or failing to process and treat Plaintiffs' applications and requests for approval and permits in the same manner that is at least as favorable and not more onerous than the manner in which other similar projects in the City are processed and treated.

94. The actions of the City that constitute the breach of the covenant of good faith and fair dealing were intentionally taken by the City in a direct response to Plaintiffs' legal challenges to the illegal imposition of the RDP by the City. The City made an intentional decision to take such actions in order to keep and maintain pressure on Plaintiffs to not continue with or change its conduct in litigation against the City and not attempt to invalidate the illegal imposition of the RDP on the City.

- 1 95. As a proximate result of the City's acts and omissions as alleged herein, the
2 Piero II project and its financing have been delayed and prevented from moving
3 forward and Plaintiff has suffered general, special, consequential, compensatory
4 and/or incidental damages, including, but not limited to: losses due to a
5 reduction in the fair market value of the Property and/or the Piero II project in
6 the tens of millions of dollars; a reduction of tens of millions of dollars in the
7 amount of financing Palmer is able to obtain for the Property and/or the Piero II
8 project due to the change in the credit and real estate markets that occurred
9 during the period of delay caused by the City; the amount of additional interest
10 on existing loans, real estate taxes and other carrying costs paid by Palmer
11 during the period of delay caused by the City, in the millions of dollars;
12 increased future costs of financing, in the tens of millions of dollars, including
13 additional interest and other sums that will have to be paid because, among other
14 things, during the period of delay, the credit and real estate markets have
15 changed and financing cannot now be found on terms as advantageous as they
16 were when Palmer could have moved forward with the Piero II project, but for
17 the acts and omissions of the City; lost opportunity and other costs, in the tens
18 of millions of dollars, due to the fact that Palmer will now have to invest
19 significantly more equity in the Piero II project because, during the period of
20 delay caused by the City, among other things, the credit and real estate markets
21 have changed such that loans for this type of project can only be obtained on
22 significantly lower loan to value or cost ratios, requiring a much larger
23 percentage of equity cushion and a much higher equity investment by Plaintiffs;
24 loss of use; and loss of rental and other revenues and profits, in the tens of
25 millions of dollars, all in an unascertained amount, according to proof.
- 26 96. In additional and/or in the alternative, Plaintiff are entitled to injunctive relief
27 and/or a decree of specific performance, including, but not limited to, the
28 following:

- 1 a. commanding, ordering, instructing and/or mandating that the City comply
- 2 with all terms of the Contract described herein;
- 3 b. commanding, instructing and/or mandating that the City recommence and
- 4 continue in good faith the processing of all applications for building and
- 5 other permits and clearances for the Piero II project including shoring and
- 6 excavation permits and foundation only permits, and further ordering the
- 7 City to process and treat Plaintiffs' applications and requests for approval
- 8 and permits in the same manner that is at least as favorable and not more
- 9 onerous than the manner in which other similar projects in the City are
- 10 processed and treated;
- 11 c. ordering the City to issue all such permits once all applicable
- 12 requirements have been met; and
- 13 d. injunctive relief proscribing and enjoining the City from continuing to
- 14 violate Plaintiff's constitutional rights in the manner described herein
- 15 and/or from taking or causing to be taken any actions which would
- 16 interfere with Plaintiffs' Permits and Applications for the Piero II project,
- 17 and from proceeding with and completing said project.

PRAYER FOR RELIEF

18
19 **WHEREFORE**, Plaintiffs, and each of them or either of them, as appropriate,
20 under applicable law, hereby pray for relief against Defendant, as follows:

On the First through the Seventh Claims for Relief:

21
22 A. For declaratory relief whereby, in essence, the Court declares the manner
23 and extent to which Defendant has violated the constitutional rights of the Plaintiffs,
24 or either of them, under the United States Constitution and/or the California
25 Constitution;

26 B. That Plaintiffs have and recover their attorney's fees and costs of suit
27 herein, in the manner and to the extent provided for by applicable law, including, but
28

1 not limited to, pursuant to 42 U.S.C. § 1988(b) and California Code of Civil Procedure
2 §1036;

3 **On the Eighth and Ninth Claims for Relief:**

4 C. For injunctive relief and/or a decree of specific performance commanding,
5 ordering, instructing and/or mandating that the City comply with all terms of the
6 Contract described herein;

7 **On All Claims for Relief:**

8 D. As a proximate result of the City's acts and omissions as alleged herein,
9 the Piero II project and its financing have been delayed and prevented from moving
10 forward and Plaintiff has suffered general, special, consequential, compensatory and/or
11 incidental damages, including, but not limited to: losses due to a reduction in the fair
12 market value of the Property and/or the Piero II project in the tens of millions of
13 dollars; a reduction of tens of millions of dollars in the amount of financing Palmer is
14 able to obtain for the Property and/or the Piero II project due to the change in the credit
15 and real estate markets that occurred during the period of delay caused by the City; the
16 amount of additional interest on existing loans, real estate taxes and other carrying
17 costs paid by Palmer during the period of delay caused by the City, in the millions of
18 dollars; increased future costs of financing, in the tens of millions of dollars, including
19 additional interest and other sums that will have to be paid because, among other
20 things, during the period of delay, the credit and real estate markets have changed and
21 financing cannot now be found on terms as advantageous as they were when Palmer
22 could have moved forward with the Piero II project, but for the acts and omissions of
23 the City; lost opportunity and other costs, in the tens of millions of dollars, due to the
24 fact that Palmer will now have to invest significantly more equity in the Piero II project
25 because, during the period of delay caused by the City, among other things, the credit
26 and real estate markets have changed such that loans for this type of project can only
27 be obtained on significantly lower loan to value or cost ratios, requiring a much larger
28 percentage of equity cushion and a much higher equity investment by Plaintiffs; loss

1 of use; and loss of rental and other revenues and profits, in the tens of millions of
2 dollars, all in an unascertained amount, according to proof.

3 E. For injunctive relief and/or a decree of specific performance, including,
4 but not limited to, the following:

5 1. commanding, instructing and/or mandating that the City
6 recommence and continue in good faith the processing of all applications for building
7 and other permits and clearances for the Piero II project including shoring and
8 excavation permits and foundation only permits, and further ordering the City to
9 process and treat Plaintiffs' applications and requests for approval and permits in the
10 same manner that is at least as favorable and not more onerous than the manner in
11 which other similar projects in the City are processed and treated;

12 2. ordering the City to issue all such permits once all applicable
13 requirements have been met; and

14 3. injunctive relief proscribing and enjoining the City from continuing
15 to violate Plaintiff's constitutional rights in the manner described herein and/or from
16 taking or causing to be taken any actions which would interfere with Plaintiffs' Permits
17 and Applications for the Piero II project, and from proceeding with and completing said
18 project; and

19 F. That Plaintiffs have and recover such other and further relief as the Court
20 deems just and proper.

21
22 DATED: January 4, 2010

COSTELL & CORNELIUS LAW CORPORATION

23
24 By: 

25 Jeffrey Lee Costell, Esq.
26 Attorneys for Plaintiffs Palmer/Sixth Street Properties,
27 L.P., a California Limited Partnership, and Geoffrey
28 Palmer